

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HONORABLE TERRY PETTEWAY, §
HONORABLE DERRECK ROSE, §
HONORABLE MICHAEL MONTEZ, §
HONORABLE PENNY POPE, §
HONORABLE SONNY JAMES, §
HONORABLE STEPHEN HOLMES, §
HONORABLE PATRICK DOYLE and §
ROOSEVELT HENDERSON, §

Plaintiffs

vs.

GALVESTON, TEXAS; and §
THE HONORABLE MARK HENRY, in §
his capacity as Galveston County Judge §

Defendants

Civil Action No. 3:11-cv-511

PLAINTIFFS' MOTION TO
DISSOLVE THREE JUDGE PANEL

TO THE HONORABLE JUDGES OF SAID COURT:

NOW COME Plaintiffs, THE HONORABLE TERRY PETTAWAY, THE
HONORABLE DERRICK ROSE, THE HONORABLE MICHAEL MONTEZ, THE
HONORABLE PENNY POPE, THE HONORABLE SONNY JAMES, THE
HONORABLE PATRICK DOYLE THE HONORABLE STEPHEN D. HOLMES AND

ROOSEVELT HENDERSON (hereinafter referred to as “Plaintiffs”), and files this Motion to Dissolve the Three Judge Panel and in support would show the following:

This case was originally filed in part as a declaratory judgment proceeding in which the Plaintiffs sought to enjoin Defendants from implementing unprecleared voting changes in violation of Section 5 of the Voting Rights Act. At the time of the filing of the original complaint, on or about November 14th, 2011, the primary election for the offices which were affected by Galveston County’s proposed redistricting plans was March 6th, 2012 and various election related deadlines were imminent. Therefore, a temporary restraining order was filed and injunctive relief was requested. Consequently, as part of that original complaint Plaintiffs requested that a three judge panel be convened.

The role of a three judge district court panel in Section 5 enforcement cases is strictly limited to a determination of the following:

1. whether a covered voting change has occurred;
2. if so, whether the requirements of Section 5 have been met i.e., has preclearance been obtained and whether;
3. implementation of such a change would violate Section 5; and
4. if not, what relief by the court is appropriate.

Lopez v. Monterey County, 519 U.S. 9, 23 (1996).

On March 5th, 2012, the Department of Justice denied preclearance to both of Galveston County’s proposed redistricting plans for County Commissioners and

Constables and Justices of the Peace. Although Galveston County still has a lawsuit pending in the United States District Court for the District of Columbia to obtain preclearance for its redistricting plan (for County Commissioners only) Defendant, Galveston County, has represented in pleadings filed with this court that they have not and will not implement any unprecleared voting change in violation of Section 5 of the Voting Rights Act. Additionally, this three judge panel has issued an injunction prohibiting Galveston County from implementing any unprecleared voting change. Furthermore, by order of the three judge panel in the Western District of Texas, the Texas Primary Election has been rescheduled to take place on May 29th, 2012.

Therefore, Plaintiffs would respectfully suggest to this Court that the specific requirement for a three judge panel in this matter no longer exists and that the remaining disputed matters in this case may now be decided by the single federal district court judge presiding in the United States District Court for the Southern District of Texas, Galveston Division. In support Plaintiffs would show that single judge courts are the rule and not the exception and that congressional acts providing for three judge courts must be strictly construed. *Allen v. Board of Elections*, 393 U.S. 544, 561 (1969); see *Gonzalez v. Automatic Emp. Credit Union*, 419 U.S. 90, 97 (1974). Additionally, pursuant to 28 USC 2284 a single judge may conduct all proceedings except the trial and enter all orders permitted by the Rules of Civil Procedure except as limited by subsection 3 and subject to review of the full court at any time before final judgment.

For these reasons Plaintiffs respectfully request this court to find that there is no longer any need for a three judge panel in this matter and to allow the district judge of the United States District Court of the Southern District of Texas, Galveston Division to conduct the remaining proceedings necessary for conclusion of this matter.

DATED this 20th day of March, 2012.

Respectfully Submitted,

BRAZIL & DUNN

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2012, I electronically filed the foregoing document with the Clerk of the United States District Court, Southern District of Texas, Galveston Division, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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